

FCC MAIL SECTION

Federal Communications Commission

DA 96-1474

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Investigation of Ameritech's
New Expanded Interconnection Offerings

Ameritech Operating Companies
Revisions to Tariff F.C.C. No. 1

CC Docket No. 96-185

Transmittal No. 981

ORDER

Adopted: August 29, 1996

Released: August 29, 1996

By the Deputy Chief, Competitive Pricing Division, Common Carrier Bureau:

I. INTRODUCTION

1. On July 2, 1996, the Ameritech Operating Companies (Ameritech) filed Transmittal No. 981 to revise its Tariff F.C.C. No. 1. Transmittal No. 981, which is scheduled to become effective on August 16, 1996, proposes to reinstate Ameritech's physical collocation expanded interconnection service.¹ Ameritech had previously provided physical collocation prior to the Commission's adoption of a mandatory virtual collocation policy in the *Virtual Collocation Order*.² According to Ameritech, the physical collocation provisions of Transmittal No. 981 are "substantially identical" to the terms of its previous physical collocation offering.³

¹ Ameritech Tariff F.C.C. No. 1, Transmittal No. 981. Ameritech refers to this physical collocation offering as "the new physical collocation service Ameritech Central Office Interconnection."

² See Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91-141, Memorandum Opinion and Order, 9 FCC Red 5154 (1994) ("*Virtual Collocation Order*"). The *Virtual Collocation Order* was issued in response to the court's decision in *Bell Atlantic v. FCC*, which vacated in part the Commission's mandatory physical collocation orders on the ground that the Commission did not have authority under the Communications Act of 1934, as amended, to require Tier 1 local exchange carriers (LECs) to provide expanded interconnection through physical collocation. *Bell Atlantic v. FCC*, 24 F.3d 1441 (D.C. Cir. 1994). The *Virtual Collocation Order* exempted LECs from having to provide virtual collocation if they chose instead to provide expanded interconnection service through physical collocation. Ameritech discontinued providing physical collocation service following the release of the *Virtual Collocation Order*.

³ Ameritech's previous physical collocation offering is under investigation in CC Docket No. 93-162.

2. On July 17, 1996, AT&T Corporation (AT&T), MCI Telecommunications Corporation (MCI), and MFS Communications Company, Inc. (MFS) filed petitions to suspend and investigate Ameritech's Transmittal No. 981, contending that these provisions raise serious questions of lawfulness. The petitioners generally argue that Ameritech's proposed rates, terms, and conditions in Transmittal No. 981 are unreasonable and discriminatory.⁴ MCI and MFS further contend that Ameritech's proposed rates, terms, and conditions for physical collocation service in Transmittal No. 981 do not comply with the Telecommunications Act of 1996 (1996 Act).⁵ On July 29, 1996, Ameritech filed a reply to the petitions to suspend and investigate. For the reasons set forth below, we grant the petitions to suspend and investigate Transmittal No. 981.

II. SUMMARY OF PLEADINGS

3. **AT&T's Petition.** In its petition, AT&T contends that Transmittal No. 981 raises serious questions of lawfulness because some of Ameritech's proposed rates for physical collocation service are "seriously overstated," and a number of the proposed terms and conditions unreasonably restrict the ability of interconnectors to make use of the physical collocation offering.⁶ AT&T claims that a comparison of the cost support for the current filing with the cost support for the physical collocation service previously offered by Ameritech discloses unexplained variations in the claimed costs for the same elements.⁷ AT&T also argues that Transmittal No. 981 unjustifiably prohibits interconnectors from using the floor space for switching, hubbing, and for placement of a battery distribution fuse bay.⁸ Furthermore, AT&T states that Ameritech provides no justification or explanation for proposing to limit interconnectors initially to a maximum of 200 square feet of floor space in each of Ameritech's central offices. AT&T argues that this limitation likely will interfere with interconnectors' ability to locate necessary equipment and facilities in the local exchange carrier's (LEC's) central offices.⁹ Finally, AT&T complains that Ameritech's proposed tariff precludes one interconnector in a central office from cross-connecting with another interconnector in that same central office without Ameritech's consent, and argues that this is unreasonably discriminatory and anticompetitive because it creates an artificial incentive for potential customers of interconnectors to obtain special access service directly from

⁴ AT&T Petition at 1-3; MCI Petition at 1, 8; MFS Petition at 3.

⁵ MCI Petition at 1-2; MFS Petition at 2-3. See Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

⁶ AT&T Petition at 1.

⁷ *Id.* at 2.

⁸ *Id.* at 3.

⁹ *Id.* at 4.

Ameritech.¹⁰

4. **MCI's Petition.** In its petition, MCI contends that the rates, terms, and conditions proposed in Transmittal No. 981 are unreasonable and only partially consistent with the 1996 Act.¹¹ MCI argues that Ameritech's proposed rates are not consistent with the pricing standards set out in the 1996 Act because the physical collocation rates that Ameritech is proposing in Transmittal No. 981 are based on its embedded costs, a practice that is prohibited by the Act.¹² MCI further argues that Ameritech's proposed terms and conditions do not comply with the Act because they: (1) place limitations on the types of equipment collocators may employ, (2) restrict collocators from interconnecting with other collocators, and (3) prevent collocators from leasing unbundled transport to Ameritech's premises.¹³

5. MCI also contends that Ameritech is proposing to impose unnecessary costs on interconnectors for physical collocation service.¹⁴ MCI states that Ameritech's proposed central office build-out charge of \$39,015 per 100 square foot is unreasonably high, because it includes extraneous costs related to heating, ventilation, and air conditioning upgrades.¹⁵ MCI further states that Ameritech unreasonably proposes to charge for accompanying interconnector-employees to washrooms and restrooms without a secure entrance.¹⁶ Moreover, MCI complains about Ameritech's proposed 200 square foot maximum space restriction and argues that Ameritech has provided no justification for placing this "severe restriction" on the availability of space.¹⁷ Finally, MCI complains that Ameritech has failed to commit to any specific timetable for fulfilling interconnector requests or to explain why it has excluded over 50 of its central offices from the tariff's list of offices at which physical collocation is available.¹⁸

6. **MFS's Petition.** MFS argues that Ameritech's tariff is unnecessarily restrictive because it does not permit interconnectors to connect with other services associated with

¹⁰ *Id.* at 4-5.

¹¹ MCI Petition at 1.

¹² *Id.* at 2-3.

¹³ *Id.* at 3-5.

¹⁴ *Id.* at 5-6.

¹⁵ *Id.* at 6.

¹⁶ *Id.*

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 8.

unbundled network elements for local telephone services or other services that the incumbent LECs already provide or have stated that they intend to provide.¹⁹ In addition, MFS complains that Transmittal No. 981 limits interconnection to six different types of equipment that Ameritech can install and maintain in its transmission node for the termination of basic transmission facilities in a central office.²⁰ MFS argues that such limitations on interconnection services and transmission equipment are inconsistent with the 1996 Act's pro-competitive collocation and interconnection mandates, and serve to impede the development of competitive alternatives for consumers.²¹

7. MFS also contends that Ameritech's physical collocation rates are unreasonable.²² MFS argues, for example, that it is unreasonable for Ameritech to require interconnectors to pay for the entire cost associated with the central office build-out up-front.²³ MFS argues that a 50 percent payment should be required instead and that the remainder be paid at the time the construction is completed.²⁴ In addition, MFS complains about Ameritech's charges for cancellation of service, "extraordinary costs," splicing costs, power consumption and delivery costs, the 200-conductor electrical cross-connection block, repeaters, commercial general liability insurance, abatement, and floor space.²⁵

8. MFS argues that Ameritech's floor space limitations are inconsistent with Commission rules requiring incumbent LECs to plan for the provision of collocater space when expanding their building site.²⁶ MFS argues that there should be no maximum space limitation for collocation space, except for those central offices for which Ameritech is able to demonstrate that there is insufficient space to permit unlimited collocation expansion.²⁷ MFS also objects to Ameritech's requirement that collocators begin to utilize central office space for the purposes of interconnection within 180 days of notice that the space is ready for the customer's use.²⁸ MFS argues that this provision is unnecessary and that this time frame

¹⁹ MFS Petition at 5-6.

²⁰ *Id.* at 6.

²¹ *Id.*

²² *Id.* at 7-14.

²³ *Id.* at 7.

²⁴ *Id.*

²⁵ *Id.* at 7-14.

²⁶ *Id.* at 14-15.

²⁷ *Id.* at 15-16.

²⁸ *Id.* at 16-17.

should be extended in cases where interconnectors encounter certain obstacles, such as rights-of-way problems.²⁹

9. MFS also complains that, although Ameritech's co-carrier agreement with MFS permits MFS to reclaim the physical collocation space for which MFS previously submitted payment, or to be credited for the money previously paid for such space, there is no such provision contained anywhere in Ameritech's tariff.³⁰ In addition, MFS suggests that because Ameritech requires interconnectors to notify Ameritech of any significant outages within the customer's transmission node when such outages could affect any of the services provided by Ameritech, Ameritech should be required to notify the interconnector of any significant outages that could affect the interconnector's operations within Ameritech's premises.³¹ Furthermore, MFS argues that Ameritech's provisions that prohibit cross-connections between collocators in Ameritech's central offices are unreasonable and discriminatory.³² MFS also argues that Ameritech's relocation provision is unreasonably discriminatory and inconsistent with the Commission's previous physical collocation policies.³³ Finally, MFS argues that Ameritech's tariff provisions that address applicability of the tariff to patrons of the interconnector, indemnification, maintenance and repair, assignment and subletting, condemnation, and limitation of liability are unreasonable and should, therefore, be revised.³⁴

10. **Ameritech's Reply.** Ameritech argues that the terms and conditions of Transmittal No. 981 are in full compliance with applicable laws and regulations,³⁵ and that the rates and charges for its physical collocation offering are just and reasonable.³⁶ Ameritech argues that Transmittal No. 981 should be evaluated as a "voluntary service offering" since, at this time, there are no Commission rules specifically pertaining to physical collocation, either in the context of expanded interconnection for interstate access services or for implementing the provisions of the 1996 Act.³⁷ Ameritech states that its filing is, nonetheless, fully

²⁹ *Id.*

³⁰ *Id.* at 17.

³¹ *Id.* at 17-18.

³² *Id.* at 18-19.

³³ *Id.* at 19-20.

³⁴ *Id.* at 20-22.

³⁵ Ameritech Reply at 2-17.

³⁶ *Id.* at 18-23.

³⁷ *Id.* at 1.

consistent with the physical collocation rules that were established by the Commission in CC Docket No. 91-141.³⁸ Ameritech argues that petitioners' arguments that its tariff is not in compliance with the 1996 Act are "completely misplaced"³⁹ because this offering provides for expanded interconnection through physical collocation to interstate access services, "an area left untouched" by the 1996 Act.⁴⁰

III. DISCUSSION

11. We disagree with Ameritech's assertion that there are no Commission rules that apply to physical collocation and that Transmittal No. 981 should, therefore, be evaluated as a "voluntary service offering." Although in *Bell Atlantic v. FCC*, the U.S. Court of Appeals for the D.C. Circuit found that we did not have the authority to require physical collocation,⁴¹ and LECs were no longer required to provide physical collocation service after December 14, 1994, the date virtual collocation tariffs were required to go into effect, the *Virtual Collocation Order* states that if LECs voluntarily choose to offer physical collocation in lieu of virtual collocation service, it will be "subject to full regulation by the Commission as a communications common carrier service."⁴² The *Virtual Collocation Order* states, "[b]ecause we envision, under the new collocation policy, that some local telephone companies may voluntarily provide physical collocation as a regulated common carrier service, we are also reaffirming many of our rules relating to the rates, terms, and conditions of physical collocation offerings."⁴³ Accordingly, we will evaluate Transmittal No. 981 under the rules and policies adopted for voluntary physical collocation in the *Virtual Collocation Order*.

12. Based on our review of the record, we find that the physical collocation provisions in Ameritech's Transmittal No. 981 raise significant questions of lawfulness regarding cost allocations, rate levels, rate structures, and terms and conditions of service. We therefore suspend Transmittal No. 981 for one day and initiate an investigation into the lawfulness of its provisions. In addition, we will issue a separate order designating the issues to be investigated and establish a pleading cycle for discussion of those issues. The rates in Transmittal No. 981 will be subject to an accounting order to facilitate any refunds that may later prove necessary.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 1-2.

⁴¹ 24 F.3d 1441.

⁴² *Virtual Collocation Order*, 9 FCC Rcd at 5156, 5166. See *In the Matter of Ameritech Operating Companies, et al.*, CC Docket No. 94-97, Erratum, at 2 (Com. Car. Bur. 1994) (the effective date in which LECs were required to offer virtual collocation service was changed from December 15, 1994 to December 14, 1994).

⁴³ *Id.* at 5157, 5166.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that the petitions to suspend and investigate Ameritech Operating Companies' Tariff F.C.C. No. 1, Transmittal No. 981, filed by AT&T Corporation, MCI Telecommunications Corporation, and MFS Communications Company, Inc., **ARE GRANTED**.

14. **IT IS FURTHER ORDERED** that, pursuant to Section 204(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 204(a), and Section 0.291 of the Commission's Rules, 47 C.F.R. § 0.291, the revisions to Ameritech Operating Companies' Tariff F.C.C. No. 1, Transmittal No. 981 **ARE SUSPENDED** for one day and an investigation of the referenced tariff transmittal **IS INSTITUTED**.

15. **IT IS FURTHER ORDERED** that Ameritech Operating Companies **SHALL FILE** tariff revisions within five business days of the release date of this Order to reflect this suspension.

16. **IT IS FURTHER ORDERED** that, pursuant to Section 204(a) of the Communications Act, as amended, 47 U.S.C. § 204(a), Ameritech Operating Companies **SHALL KEEP ACCURATE ACCOUNT** of all earnings, costs, and returns associated with the rates that are subject to this investigation and of all amounts paid thereunder and by whom such amounts are paid.

FEDERAL COMMUNICATIONS COMMISSION



Jane E. Jackson
Deputy Chief, Competitive Pricing Division
Common Carrier Bureau